

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCHE, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.113/Ind/2016
Assessment Year: 2009-10**

Shri Raghvendra Goswami, 172, C-Section Industrial Area Govindpura, Bhopal,	<u>बनाम/</u> Vs.	ACIT -3(1), Bhopal
(Appellant)		(Revenue)
P.A. No.AAZPG0982C		

Appellant by	ShriAshishGoyal& N. D. Patva, (ARs)
Revenue by	Shri K. G. Goyal Sr. DR
Date of Hearing:	04.12.2017
Date of Pronouncement:	05.12.2017

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the Assessee is directed against the order of Ld. Commissioner of Income Tax(Appeals), Bhopal-2, Madhya Pradesh (in short 'CIT'), dated 16.11.2015 for the A.Y. 2009-10. The assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case, the Ld. CIT() was not justified in upholding that the order u/s. 143(3)/147 passed by the assessing officer was not illegal, invalid and untenable in law.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in holding that the assessing officer has rightly invoked the provisions of section 50C to compute Long Term capital Gain at Rs.61,53,470/-.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in holding that the amendment to section 50C from 01.10.2009 applied retrospectively to the transaction that took place in the assmt. Year 2008-09.

4. On the facts and in the circumstances of the case, the Ld. CIT() was not justified in directing the assessing officer to assess the Long Term Capital Gain of Rs.61,53,470/- in the assemt. Year 2008-09 in place of Rs.22,50,190/-, which was already assessed u/s 143(3) and in this way to increase the capital gain by Rs.39,03,280/- in the assmt. Year 2008-09.”

2. Briefly stated facts are that the case of the assessee was reopened for assessment in the assessment u/s 143(3) r.w. section 147 was framed vide order dated 18.03.2014 pertaining to the A.Y. 2009-10 while framing reassessment the Assessing Officer observed that during the year under appeal the assessee had sold an agricultural land at sale consideration of Rs.28,00,000/- however as per the stamp duty valuation authority the same is Rs.67,55,000/-. After giving notices to the assessee, the assessing officer adopted the value as adopted by stamp duty valuation authority and recomputed the capital gain thereby the assessing officer made addition of Rs.61,53,470/- and assessed income at Rs.96,79,760/- against the income declared at Rs.35,26,290/-.

3. Being aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who after considering the submissions partly allowed the

appeal thereby he directed the assessing officer to assess the long term capital gain of Rs.61,53,470/- for A.Y. 2008-09 where the part of it already stood assessed at Rs.22,50,190/-.

4. Ground no.1 is against validity of the reassessment.

Ld. Counsel for the assessee vehemently argued that the authorities below were not justified in making the addition in the year under appeal. He submitted that the stand of the Revenue is contradicted. He contended that the agreement to sale was executed on 31.05.2007 whereby the possession of land was given to the assessee and entire sale consideration was also paid on that date itself. Under these facts, in terms of section 2(47) of the Income Tax Act, the transfer stood completed on 31.05.2007, therefore, the transaction is to be related back to assessment year 2008-09 as against the assessment year 2009-10 which is reopened by the Assessing Officer. He therefore submitted that under these facts the reopening of the assessment for A.Y. 2009-10 is vitiated on the contrary. Ld. Departmental Representative (DR) strongly supported the orders of the authorities below and submitted that the transaction was completed in the year under appeal. Therefore, the Assessing Officer was justified in reopening the assessment of the assessment year 2009-10 and assessing the income escaped in the year under appeal.

5. We have heard the rival contentions perused the material available on record and going through the orders of the authorities

below. Before advertizing to the rival contentions, it is pertinent to note that the undisputed facts is that the assessee executed an agreement to sale on 31.05.2007, in pursuance of this agreement parties thereto received entire sale consideration and possession thereof in terms of the agreement to sale dated 31.05.2007. This fact is not controverted by the Revenue by placing any contrary material on record. Section 2(47) of the Income Tax Act, defines transfer as under:

“transfer, in relation to a capital asset, includes-

- (i) the sale, exchange or relinquishment of the asset, or*
- (ii) the extinguishment of any rights therein or*
- (iii) the compulsory acquisition thereof under any law; or*
- (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment or*
- (iva) the maturity or redemption of a zero coupon bond, or*
- (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882(4 of 1882) or*
- (vi) any transaction (whether by way of becoming a member of, or acquiring shares in , a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring or enabling the enjoyment of any immovable property.*

[Explanation 1]- for the purposes of sub-clauses (v) and (vi) “immovable property” shall have the same meaning as in clause (d) of section 269UA.]

Explanation 2- for the removal of doubts, it is hereby clarified that “transfer” included and shall be deem to

have always included disposing of or parting with an asset or any interest therein or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally voluntarily or involuntarily, by way of an agreement or otherwise notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;]

6. The capital gain is to be computed u/s 45 of the Act, arising from the transfer of capital asset.

It is the contentions of the assessee that the transfer of the capital asset took place on 31.05.2007 in the F.Y. 2007-08 relevant to A.Y. 2008-09. The Assessing Officer has reopened the assessment in respect of the income escaped assessment pertaining to the A.Y. 2009-10 and further it is contended that it is undisputed fact that the assessee has duly disclosed this transactions in his return of income pertaining to the A.Y. 2008-09 and in the computation of income of capital gain of Rs.22,50,190/- is offered for tax in support of these contentions our attention was drawn to paper book page 16.

7. The Ld. counsel for assessee also drew our attention to the reasons recorded by the AO for issuance of notice u/s 148 at page 32 of paper book wherein the assessing officer has stated that he has reason to believe that during the assessment year 2009-10 the income to the tune of Rs.39,55,000/- has been escaped from assessment. However, the Ld. CIT(A) while deciding the appeal of

the assessee directed the AO to assess the long term capital gain of Rs.61,53,470/- in the assessment year 2008-09 where part of it already stood assessed at Rs.22,50,190/-. Against this finding of Ld. CIT(A), the Revenue has not preferred any appeal. Therefore, it can be safely inferred that the Revenue has accepted that income which escaped assessment was pertaining to the A.Y. 2008-09. However, as per the notice for reopening the assessment year for opening is taken as assessment year 2009-10. In our view, this is not permissible under the law, in view of the explanation to section 2(47) wherein it clarifies that “transfer” includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally voluntarily or involuntarily, by way of an agreement or otherwise notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company. Hence, under the facts of the present case the transfer of capital asset took place in the financial year 2007-08, relevant to A.Y. 2008-09. The Assessing Officer is empowered as per section 147 if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment or any assessment year, he may subject to the provisions of sections 148 to 153 assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings. Therefore, the assessing officer should

form a belief in respect of the escapement of income pertaining to a particular assessment year in the given case, the income escaped relates to the earlier year and notice is issued u/s 148 for the subsequent year.

8. Thus, the foundation of reopening is contrary to the provisions of the Act, we, therefore, quash the impugned assessment order. The other grounds raised in this appeal have become infructuous hence dismissed. Before parting we may clarify the Revenue would be at liberty to take appropriate action if law so permits, in respect of appropriate assessment year.

9. In the result, the appeal of the Assessee is disposed of in terms of indicated hereinabove.

Order was pronounced in the open court on 05.12.2017.

Sd/-
(MANISH BORAD)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)

न्यायिक सदस्य / JUDICIALMEMBER

Indore; दिनांक Dated : 05/ 12/2017

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Private Secretary/DDO, Indore